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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/900,115	07/06/2001	Stephen H. Bartelmez	50450-8039.US00	5757
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22918 7590 04/02/2003

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EXAMINER

MCGARRY, SEAN

ART UNIT	PAPER NUMBER
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1635

DATE MAILED: 04/02/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

**FILE COPY**  
**Office Action Summary**

Application No.

09/900,115

Applicant(s)

BARTELMEZ ET AL.

Examiner

Sean R McGarry

Art Unit

1635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-18 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-18 and 20-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

Applicant's election without traverse of Group II in Paper No. 8, filed 1/17/03 is acknowledged. It is noted that applicant has canceled the non-elected claims and claims 15-18 and 20-23 are under examination.

It is noted that the restriction requirement mailed 9/19/02 also included a restriction requirement based on SEQ ID NOS 1, 2, and 5. It is noted that applicant argues this requirement as a species requirement. It is noted that there is not species requirement of record. Although applicant election of a "species" is improper, the examiner has, upon reconsideration, rejoined the inventions defined by SEQ ID NOS: 1, 2, and 5.

Claims 15-18 and 20-23 and SEQ ID NOS: 1, 2, and 5 are under examination.

Claims 15-18 and 20-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "said cultured TGF- blocking agent-treated stem cell" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "said enriched stem cell composition" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim 18 recites the limitation "wherein the linkage is the phosphorodiamidate" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 depends from a canceled claim rendering the metes and bounds of claim 20 unclear.

Claims 17, 20, 22, and 23 are rejected as they depend from claims 15, 16 and 18.

Claim 20 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Applicant is advised that should claim 17 be found allowable, claim 20 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

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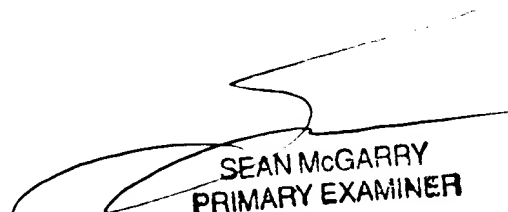
The claim as filed are free of the prior art searched. The closest prior art found is Klein et al [US 5,958,774] which discloses the prestimulation of human stem cell with antisense (including SEQ ID NO: 1 which overlaps SEQ ID NO: 1 of the instant invention) targeted to TGF- $\beta$  in a method of gene transfer. Klein does not disclose nor teach treating human stem cells with TGF- targeted antisense in annex vivo treatment of cells in a method of decreasing the time for hematopoietic reconstitution of a patient following chemotherapy or radiation treatment, for example.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean R McGarry whose telephone number is (703)305-7028. The examiner can normally be reached on M-Th (6:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John LeGuyader can be reached on (703) 308-0447. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SRM  
April 1, 2003

  
SEAN MCGARRY  
PRIMARY EXAMINER  
1635